



IN THE UPPER TRIBUNAL
IMMIGRATION AND ASYLUM CHAMBER

Case No: UI-2023 002080
UI-2023 002081
First-tier Tribunal No: HU/58127/2022
HU/58128/2022

THE IMMIGRATION ACT

**Decision & Reasons Issued:
On 28th of November 2023**

Before

DEPUTY UPPER TRIBUNAL JUDGE FARRELLY

Between

**MRS AMERA SHAWQE DIAB EID
MASTER HAMADA AHMED HAMADA AHMED ABDELAAL
(ANONYMITY DIRECTION NOT MADE)**

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant: Mr Z Raza, Counsel, instructed by Marks and Marks, Solicitors.
For the Respondent: Mr E Terel HOPO.

Heard at Field House on 12 September 2023

DECISION AND REASONS

Introduction

1. On 3 April 2022 the appellant and her son applied for entry clearance. Both are nationals of Egypt, born on 2 November 2083 and 21 June 2011 respectively. Their sponsor is a British national, Dr Gordon Head. They are all currently living together in the United Arab Emirates. The first appellant and the sponsor are married and the second appellant is the sponsor's stepson. The first appellant gave birth to their son Adam on 23 August 2023 .He is British.
2. Their applications were refused on 5 October 2022 on the basis the financial requirements of appendix FM to the immigration rules were not evidenced , as

required by FM-SE. The refusal states the sponsor failed to meet the requirements of EC-P1.1 (d) of appendix FM. This in turn refers to the requirements of section E -ECP . E -ECP .3.1 refers to the financial requirement as being a gross annual income of at least £18,600 and an additional £3800 for the first child. HE - ECP 3.2 sets out the sources of income taken into account.

3. The sponsor is a former police officer who receives two pensions. He works as a security adviser in the United Arab Emirates and is said to have an annual income of £175,000. His intention when the application was made was to continue working for his current employers remotely from the United Kingdom. He also set up a business in the United Kingdom trading as Argonne Security Services. The sponsor refers to savings of £52,000.
4. Their appeal was heard by First-tier Tribunal Judge O'Garra on the CVP platform from Hatton Cross on 24 March 2023. The appellants were represented by Mr Raza, as they are now, and the respondent were represented by counsel. Their appeals were dismissed.

The First-tier Tribunal

5. First-tier Tribunal Judge O'Garra concluded that the application did not meet the immigration rules. This was because the specified evidence to show £18,600 for the first appellant and an additional £2800 for the second was not provided . There were various shortcomings referred to in the proofs, such as the absence of a letter from the sponsor's employer giving employment details. The cash savings had to have been held for six months which was not the case. The sponsor had not provided the required specified evidence regarding the business in the United Kingdom. The specified evidence with regard to the stated pensions for the sponsor had not been provided. The judge concluded that the financial requirements in the rules have not been satisfied.
6. The judge then consider the position under Article 8 and found the refusal did not result in any interference with the sponsor's family life. They were all together as a family unit in the United Arab Emirates and that this could continue. Similarly, there was no interference with their private life.

The Upper Tribunal

7. Permission to appeal was granted by Upper Tribunal Judge Sheridan as it was arguable appendix FM - SE does not require a person outside the United Kingdom proposing to engage in self-employment to provide tax returns in respect of the prospective employment. It was also arguable the judge erred in applying the respondent's guidance to the sponsor.
8. At hearing, Mr Raza said that the immigration rules allowed for overseas income to be taken into account. I was referred to the submitted job offer to the sponsor. The sponsor would continue doing his UAE work remotely from the United Kingdom. I was referred to the certificate of incorporation of the company he has established of which he is a director.
9. He submitted that the First tier Judge relied upon the respondent's policy document. The part referred to did not apply in the sponsor's circumstances

and the judge erred at paragraph 28 in restricting matters to tax returns. The circumstances here were different, with the sponsor also being self-employed.

10. Ultimately, the financial requirements are to avoid individuals being a burden upon the State. I was referred to the sponsor's income. There was no suggestion the sponsor's account was not credible. It was pointed out that the first appellant had given birth to their son Adam after the decision.
11. The representatives were in agreement that if I found an error of law then I could remake the decision on the evidence before me. Furthermore, Mr Terel agreed to my considering the new evidence in relation to the offer of employment.

Consideration

12. In the application form the sponsor indicates he married the first appellant on 2 February 2020. He was employed since 1 April 2016 by Injasar in Abu Dhabi, UAE and was at the time of application earning £174,000 per annum. This considerably exceeds the financial requirements. There is a letter dated 6 April 2022 from the appellants solicitors which refers to providing evidence in support of the application. There is an email from the appellants solicitors dated 5 October 2022 to the respondent. It states that the sponsor's income with the company will continue notwithstanding the family's relocation to the United Kingdom. The solicitors provided evidence of his income. This evidence has not been challenged.
13. Reference was made to paragraph 99 of MM(Lebanon) [2017] UKSC 10. The Supreme Court said there was nothing to prevent the tribunal, in the context of the HRA appeal, from judging for itself the reliability of any alternative sources of finance in the light of the evidence before it. The court also said that it made little sense for decision makers at the earlier stages be forced into a narrower approach than they could defend on appeal. The guidance states that following this decision the rules were changed were refusal would otherwise breach article 8 and allowed other credible and reliable sources of income to be taken into account.
14. The intention would be that the family would relocate to the United Kingdom and to that end that their sponsor had establish a company, Argonne Security services Ltd. It has secured a contract with the Qatari government and was relevant when considering the wider financial circumstances.
15. Appendix FM -SE of its nature is highly prescriptive and attempts to set out specific proofs and timings. The provisions are at times difficult to follow. There will inevitably be scenarios which do not easily fit in with the specified evidence requirements, particularly as is the case here were the sponsor is working abroad. It is linked to appendix FM and in the present situation section EC -P is dealing with entry clearance for a partner.
16. Appendix FM E-ECP.3.1 refers to the financial requirements. In most cases these will be relating to the sponsor. There is reference to a partner returning to the United Kingdom and in employment overseas as well as in the United Kingdom.

17. First-tier Tribunal Judge O'Garra made a material error of law at paragraph 25 in the way appendix FM SE was applied. The reference to the respondent's guidance does not concern the sponsor's situation. The provisions cited apply to those returning to take up salaried employment which the sponsor is not then doing.
18. Amongst the new evidence submitted is confirmation that the sponsor is to take up employment in the United Kingdom starting on 1 December 2023 on a two-year contract earning £7000 per month. This information can be relied upon and is an indication of the level of his income. He is described in the job offer as a consultant and is engaged in a two-year fixed term contract. This new evidence would suggest he is to be an employee rather than an independent contractor.
19. The respondent took the view that the refusal was not interfering with the appellants article 8 rights because the family are together in the United Arab Emirates. However that view does not respect their private and family life in that they wish this to be in the United Kingdom and not the UAE. That family life encompasses not only the best interests of the second appellant as a child but also the rights of the sponsor and their new baby as British nationals .
20. I take into account the new evidence showing the birth of the sponsor's son, a British national and the employment he is to take up in the United Kingdom. Again, this clearly shows income in excess of the requirements. With this background the possible separation of the family if the sponsor will take up employment here would be unduly harsh .It is my conclusion that the interference is disproportionate.
21. Applying the financial information provided I remake the decision allowing the appeals. I find appendix FM is met. If I am wrong in this given the complexity of the rules, then the appeal is allowed under article 8. There are no contrary public interest factors as specified in section 117 B.

Notice of Decision

The decision of First-tier Tribunal Judge O'Garra materially errs in law and is set aside. I remake the decision allowing the appeals.

Francis J Farrelly
Deputy Judge of the Upper Tribunal
Immigration and Asylum Chamber